

A.G. Contract No.: KR04-0108TRN  
ADOT ECS File No.: JPA 03-116  
Project: SR 101L Agua Fria Freeway  
Section: Bethany Home Road T1  
TRACS Nos.: H6405 01D, S1D, K1D  
BUDGET SOURCE ITEM #-City Funded  
City Clerk Number:

INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF GLENDALE

THIS AGREEMENT is entered into 30th April, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF GLENDALE, acting by and through its CITY MANAGER (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 and City Charter, Article 1, Section 3 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. The City desires to fund the administrative costs of pre-design and the preparation of construction contract documents for auxiliary lanes, freeway ramps and cross road for Bethany Home Road, at an estimated cost of \$535,000 00, herein referred to as the "Project", as a City funded Project.

4. It is understood by the parties herein, that the City will be eligible to recover final design costs, if those final design costs are approved through the Maricopa Association of Governments programming process or the Arizona Department of Transportation programming process. The purpose of this agreement is to define each party's responsibility associated with the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26804  
Filed with the Secretary of State  
Date Filed: 04/30/04

Janice K. Brewer  
Secretary of State

By: Darryl D. Greenwald

## II. SCOPE OF WORK

### 1. The State will:

a. By execution of this agreement, agree to be the authorized agent for and on behalf of the City, retain and contract with Design Consultants (the "Consultants"), to prepare all necessary documents including, Final Design Documents, associated with the addition of auxiliary lanes, ramps and a cross road.

b. Upon execution of this agreement, invoice the City \$535,000.00 for the estimated cost to complete the Project, which includes a fixed cost/lump sum of \$35,000.00 for the State's engineering and review administration fee, as shown on Exhibit "A1". Administer the Consultants and make all payments to the Consultants, confer with the City on any Consultant(s) related contract modifications.

c. Upon Receipt of the \$535,000.00, issue a Notice to Proceed (NTP) to the Consultants associated with the Project.

d. Provide the City the Final Plans prepared at intermediate stages for review and comment. Incorporate the City's comments in preparation and provide the final documents.

e. Provide all required coordination with Federal Highway Administration (FHWA) and other agencies affected in association with the addition of new features including required approvals, as appropriate to this effort.

f. Upon completion of the final documents, will invoice or reimburse the City any difference between the initial estimated amounts paid by the City and the actual costs associated with the preparation of the final documents.

g. Upon approval of the documents by the State, determine whether to amend this agreement to include the construction costs, to be funded by the City and/or the State for the construction of the project to add the new features.

h. Coordinate with the City upon the City's and/or the State's availability of funding, to initiate a separate agreement to address the terms and details for scheduling, funding, construction and maintenance responsibilities for the construction of the new features referenced in this Project.

i. Reimburse the City for final design costs, in the event the funding for the final design is approved through the Maricopa Association of Governments or the Arizona Department of Transportation programming process.

### 2. The City will:

a. By execution of this agreement, hereby designate the State as authorized agent for and on behalf of the City, to retain and contract with Design Consultants (the "Consultants"), to prepare all necessary documents including, Final Design Documents, associated with the addition of auxiliary lanes, ramps and a cross road.

b. Upon execution of this agreement, and within 30 days of receipt of an invoice, remit \$535,000.00 to the State, for the estimated cost to complete the Project, which includes a fixed cost/lump sum of \$35,000.00 for the State's engineering and review administration fee, as shown on Exhibit "A1".

c. Review and provide written comments to the State, within 15 days of receipt, of any stage of final design. Be responsible for any Consultant(s) claims for extra compensation attributable to the City.

d. Reimburse the State, in the event the actual cost of the Project exceeds the estimated cost paid by the City, within 30 days after receipt of invoice for the actual costs associated with the Project, including any additional costs for the State's engineering and review administration fee, in excess of the amount included with the estimated Project costs

e. Should the City withdraw its proposed plans for whatever reason, be responsible for all costs incurred by the State up to the time of withdrawal, unless the reason for the City's cancellation is due to the State's failure to comply with its obligations herein

f. Upon approval by the State of the documents, and with the coordination with the State, determine whether to amend this agreement to allow for the City and/or the State's funding of the construction efforts necessary for a construction project to add the new features to the SR 101L freeway.

g. Coordinate with the State, upon the City's and/or the State's availability of funding to initiate a separate agreement to address the terms and details for scheduling, funding, construction and maintenance responsibilities for the construction of the new features referenced in this Project.

h. Invoice the State for reimbursement of the final design costs, in the event the funding for the final design is approved through the Maricopa Association of Governments or the Arizona Department of Transportation programming process.

### **III. MISCELLANEOUS PROVISIONS**

1. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees), hereinafter collectively referred to as "claims", arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents employees, or volunteers.

2. This agreement shall remain in force and effect until completion of the work contemplated herein and all reimbursements; provided, however, this agreement may be cancelled at any time prior to the advertisements of Design Consultants, with thirty days written notice to the other party.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518 or 12-1518(B) as appropriate.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

**For Contract Issues:**

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, MD 616E  
Phoenix, AZ 85007  
FAX: (602) 712-7424

City of Glendale  
Transportation Director's Office  
5850 West Glendale Avenue  
Glendale, AZ 85301  
FAX: (623) 915-1029

**For Billing Issues:**

Arizona Department of Transportation  
Cost Accounting  
206 South 17 Avenue, MD 204B  
Phoenix, AZ 85007  
FAX: (602) 712-8471

City of Glendale  
Finance  
5850 West Glendale Avenue  
Glendale, AZ 85301  
FAX: (623) 915-2827

10. Pursuant to Arizona Revised Statutes Section 11-952, (D), attached hereto and incorporated herein are the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

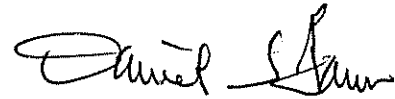
**CITY OF GLENDALE**, a Municipal  
Corporation, Ed Beasley, City Manager

**STATE OF ARIZONA**  
Department of Transportation

By


  
ED BEASLEY  
City Manager

By

  
DANIEL S. LANCE, P.E.  
Deputy State Engineer

ATTEST

By

  
PAMELA HANNA  
City Clerk

**Exhibit A1**  
**(JPA 03-116)**

**SR 101L, Bethany Home Rd. Auxiliary Lanes, Ramps, Cross Rd**  
**Construction Contract Documents**  
**Cost Estimate**

Engineering/Design H640501D	\$500,000
ADOT Administration for design (Fixed cost) H6405S1D and H6405K1D	\$25,000
ADOT Administration for pre-design (Fixed cost) H6405S1D and H6405K1D	<u>\$10,000</u>
Total Estimated Costs	\$535,000

RESOLUTION NO. 3746 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
GLENDALE, MARICOPA COUNTY, ARIZONA,  
AUTHORIZING AND DIRECTING THE ENTERING INTO OF  
AN INTERGOVERNMENTAL AGREEMENT WITH THE  
ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE  
LOOP 101/BETHANY HOME ROAD AUXILIARY LANES,  
RAMPS, AND CROSS ROAD CONTRUCTION.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

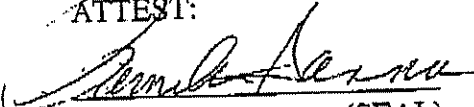
SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the City of Glendale and the Arizona Department of Transportation (JPA 03-116) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreement on behalf of the City of Glendale.


PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 13th day of April, 2004.

  
\_\_\_\_\_  
MAYOR


ATTEST:

  
\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

REVIEWED BY:

  
\_\_\_\_\_  
City Manager

APPROVAL OF THE CITY OF GLENDALE ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF GLENDALE, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 15 day of April, 2004

  
Jon Paladini  
City Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE 602.542.8855

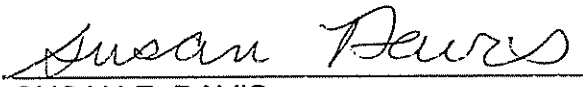
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-0108TRN (**JPA 03-116**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 28, 2004

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED/mjf  
Attachment  
841691